

State of Michigan
Judicial Tenure Commission

Annual Report 2014



Judicial Tenure Commission
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COMMISSIONERS

HON. DAVID H. SAWYER

CHAIRPERSON

HON. PABLO CORTES

VICE CHAIRPERSON

NANCY J. DIEHL

SECRETARY

HON. MONTE J. BURMEISTER

DAVID T. FISCHER

HON. NANJI J. GRANT

HON. MICHAEL M. HATHAWAY

THOMAS J. RYAN, ESQ.

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Judicial Tenure Commission

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February 9, 2015

Honorable Justices of the Michigan Supreme Court
Honorable Rick Snyder, Governor
Honorable Members of the Michigan Legislature
Honorable Judges

I am pleased to present the Annual Report of the Michigan Judicial Tenure Commission for the year 2014. This Annual Report is presented to inform the public and all branches of state government about the Commission's duties, operations, and actions.

The Commission remains committed to fulfilling its responsibilities to the People of the State of Michigan. It also takes this opportunity to thank its devoted and professional staff members for their work and assistance to the Commission this past year. It is hoped that through the vigilant and dedicated work of the Commission, the public's confidence in the integrity, independence, and fairness of the judiciary will be preserved.

Very truly yours,

A handwritten signature in black ink, appearing to read "D. H. Sawyer".

David H. Sawyer
Chairperson
For the Commission

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COMPOSITION OF THE COMMISSION – 2014

Hon. Nanci J. Grant–Chairperson

Judge, 6th Circuit Court
1200 N. Telegraph Road, Dept. 404
Pontiac, MI 48341
(248) 858-0358
Term Exp. 12/31/15
Elected by Circuit Court Judges

Hon. David H. Sawyer, Vice-Chairperson

Judge, Michigan Court of Appeals
350 Ottawa Ave. NW
Grand Rapids, MI 49503
(616) 456-1811
Term Exp. 12/31/15
Elected by Court of Appeals Judges

Hon. Pablo Cortes, Secretary

62A District Court
2650 DeHoop Ave. SW
Grand Rapids, MI 49509
(616) 257-9814
Term Exp. 12/31/16
Elected by Judges of Limited Jurisdiction

Hon. Monte J. Burmeister

Judge, Probate/District Court
46th Circuit Trial Court
(989) 344-3260 Ofc
Term Exp. 12/31/17
Elected by Probate Judges

Nancy J. Diehl, Esq.

3034 W. Grand Blvd., Suite 8-450
Detroit, MI 48202
(313) 875-5110
Term Exp. 12/31/17
Elected by State Bar Membership

David T. Fischer

3034 W. Grand Blvd., Suite 8-450
Detroit, MI 48202
(313) 875-5110
Term Exp. 12/31/17
Appointed by Governor

Hon. Michael M. Hathaway

8120 E. Jefferson, Apt 6E
Detroit, Michigan 48214
(313) 224-2417
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Elected by State Bar Membership

Melissa B. Spickler

3034 W. Grand Blvd., Suite 8-450
Detroit, MI 48202
(313) 875-5110
Term Exp. 12/31/16
Appointed by Governor

Thomas J. Ryan, Esq.

2055 Orchard Lake Road
Sylvan Lake, MI 48320
(248) 334-9938
Term Exp. 12/31/16
Elected by State Bar Membership

BIOGRAPHIES

Hon. Monte J. Burmeister is the Probate Judge for Crawford County, Michigan. He was elected to the Probate Bench in 2006 and was re-elected in 2012. Judge Burmeister was in private practice prior to taking the bench and operated his own law firm from 1999 through 2006. He graduated with a Bachelor of Arts from James Madison College at Michigan State University, with honors, in 1990, and received his Juris Doctor from Wayne State University Law School in 1993. Judge Burmeister sits on the Executive Board for the Michigan Probate Judges Association. He began his tenure on the Commission in 2013.

Hon. Pablo Cortes is a District Court Judge in the city of Wyoming, Kent County. He was appointed to his seat in 2005 and subsequently elected in 2006 and 2008. From 1995 until taking the bench, Judge Cortes served as an Assistant Prosecuting Attorney for Kent County. Judge Cortes graduated from the University of Michigan in Ann Arbor with honors in 1989 and from Wayne State University Law School in Detroit in 1995. He was elected to the Judicial Tenure Commission in 2010. Aside from his service on the commission and various community groups, Judge Cortes serves on the board of the Michigan District Court Judges Association and its Legislative Committee. He is also an Adjunct Professor at both the Thomas M. Cooley Law School in Grand Rapids and the Grand Rapids Community College Police Academy. Judge Cortes served as the Commission's Secretary in 2013 and 2014.

Nancy J. Diehl, Esq. retired from the Wayne County Prosecutor's Office in 2009. Her prosecution career spanned 28 years and her last position was as Chief of the Trial Division, overseeing general trials, child and family abuse, homicide, auto theft, and major drugs. Ms. Diehl is on the Wayne County Kids TALK Child Advocacy Advisory Board and past president of the State Bar of Michigan. Fellow members of the State Bar of Michigan elected her to the Judicial Tenure Commission for a term beginning January 1, 2006. She is currently serving her third term, which began on January 1, 2012. Ms. Diehl has a B.A. from Western Michigan University and a J.D. from Wayne State University.

David T. Fischer is Chairman and Chief Executive Officer of The Suburban Collection, the 13th largest automotive group in the U.S. and one of the largest privately-held automotive groups in Michigan. It encompasses 29 brands across 45 locations throughout Michigan, southeast Florida, and recently southern California. The Suburban Collection also operates state-of-the-art collision centers throughout Michigan. Mr. Fischer has been honored with the Time Magazine Quality Dealer Award, the General Motors Dealer of the Year Award, and Ford Motor Company's "Salute to Dealers" award for automotive excellence and community service.

Mr. Fischer serves as Chairman Emeritus of the North American International Auto Show. He also serves on the Board of Trustees for the College for Creative Studies and has chaired the Campaign Committee supporting the renovation of the historic Argonaut building as part of the CCS campus. Mr. Fischer received an Honorary Doctorate in Fine Art from CCS as well.

David Fischer was recently elected Emeritus Director of the Detroit Institute of Arts, and also supports the Detroit Symphony and the Museum of Contemporary Art Detroit. Mr. Fischer and his wife Jennifer actively support more than 20 charitable organizations including the American Cancer Society, the Juvenile Diabetes Research Foundation, Make-A-Wish and Forgotten Harvest. The Suburban Collection, under David Fischer's leadership, has been a flagship sponsor of "Making Strides against Breast Cancer" and for the past ten years has been a sponsor of the "Teacher of the Year" program. In 2010 The Suburban Collection joined Ford in the launch of Ford Mobile Food Pantries, an initiative to bring food to those in need throughout metro Detroit. The initiative also serves as a pilot for a national dealer program to feed the hungry.

Hon. Nanci J. Grant is an Oakland County Circuit Court Judge. She was elected by the state's Circuit Judges to the Judicial Tenure Commission for the term commencing January 1, 2007. Judge Grant received her Bachelor of Arts Degree from The University of Michigan, where she graduated with honors, and her Juris Doctor from Wayne State University. She worked in private practice prior to being elected to the bench in 1996. Judge Grant served as President of the Michigan Judges Association. Judge Grant is the Chief Judge of the Sixth Circuit Court of Michigan and served as the Commission's Secretary, and served as the Commission's Chair in 2013 and 2014..

Hon. Michael M. Hathaway a member of the State Bar of Michigan for over 40 years, is currently a Wayne County Circuit judge assigned to the court's Criminal Division. He is a graduate of Wayne State University (1967) and the Detroit College of Law (1971). During law school Judge Hathaway taught in Detroit public schools and upon admission to the bar was hired by Vandever Garzia PC. He remained there for 30 years, and eventually served as a managing partner before his appointment to the bench in 2001. While in practice he handled a variety of tort litigation, representing both plaintiffs and defendants. Judge Hathaway currently serves on the Third Circuit's Executive Committee, the Assigned Counsel Qualifications Committee and the court's Docket Review Committee. He was elected to the Judicial Tenure Commission in 2012.

Thomas J. Ryan, Esq. is a member of the State Bar of Michigan, Oakland County Bar Association, and the Oakland County Ancient Order of Hibernians. Mr. Ryan is a past president of the State Bar of Michigan serving as its 66th President from September 2000, to September 2001. Mr. Ryan served on the Oakland County Bar Association's Board of Directors and was its President from 1993 to 1994. He received his Undergraduate Degree from the University of Notre Dame and his law degree from the University of Detroit Mercy. Mr. Ryan has been in the private practice of law since January, 1977, and is the attorney for the Village of Beverly Hills, City of Keego Harbor, City of the Village of Clarkston, and the City of Orchard Lake Village from May 2001 to April 2011, as well as the prosecuting attorney for the Township of Bloomfield, from July, 1978 to October, 2006. Mr. Ryan served as the Commission's Vice Chairperson, and Chairperson.

Hon. David H. Sawyer was elected to the Court of Appeals in 1986. He was elected to the Judicial Tenure Commission by his fellow Court of Appeals judges for a term that began on January 1, 2010. Judge Sawyer currently is Chief Judge Pro Tem of the Michigan Court of Appeals. Before being elected to the bench, he was the Kent County Prosecuting Attorney from 1977 to 1987. Judge Sawyer is a Past President of the Michigan Prosecuting Attorneys Association. He received his Bachelor of Science degree from the University of Arizona in 1970 and received his law degree from Valparaiso University School of Law in 1973. Judge Sawyer served as the Commission's Vice-Chair in 2013 and 2014.

Melissa B. Spickler is a veteran of the financial services industry, with more than three decades of accomplishments as a Merrill Lynch Financial Advisor. She founded The Spickler Group in 1980 and has since turned it into a 10 person team serving both individual as well as institutional clients. Missy is a Managing Director Wealth Management, is on the Executive Committee of Merrill's National Women's Exchange, serves as President of the Detroit Area Chapter of the Women's Exchange, and has recently served 3 years on the National Advisory Council to Management. She has a Bachelor's degree in Criminal Law from Michigan State University and also holds a Chartered Retirement Planning Counselor SM designation.

Most recently, Missy was recognized in Barron's Top 1200 Advisors by State. In 2012 and 2013, she was named to Barron's prestigious Top 100 Women Financial Advisors Nationwide. In 2012 and 2013, she was recognized in Registered Rep Magazine as one of the Top 50 Women Advisors Nationwide. For the past 3 years, Missy has been voted by Hour Magazine as a 5-Star Wealth Manager. Her commitment to educating consumers on the importance of planning for the impact of health care costs in retirement prompted Barron's Magazine to feature her as the first financial advisor to be on the cover, and in the article "How to Protect Your Health & Wealth."

2014 JTC Commissioners



FRONT ROW (L-R): Judge David H. Sawyer, Judge Nanci J. Grant, Judge Pablo Cortes

BACK ROW (L-R): Judge Monte J. Burmeister, Paul J. Fischer, (Executive Director) Nancy J. Diehl,
David T. Fischer, Melissa B. Spickler, Judge Michael M. Hathaway, Thomas J. Ryan

I. COMMISSION JURISDICTION AND LEGAL AUTHORITY

A. The Authority of the Judicial Tenure Commission

The Judicial Tenure Commission is an independent state commission that came into being in 1968 by amendment to the Michigan Constitution. The Commission investigates allegations of judicial misconduct and disability, conducts hearings as appropriate, and recommends sanctions to the Michigan Supreme Court. The Commission's objective is to enforce high standards of ethical conduct for judges. On the one hand, judges must be free to act independently on the merits of the case and in good faith. However, they must also be held accountable by an independent disciplinary system should they commit misconduct. The judicial discipline system must not only fulfill its primary purpose – to protect the public and preserve the institutional integrity of the judiciary – but also serve to shield judges from attack by unsubstantiated complaints.

The Commission has jurisdiction over all active state judges. The Commission also has jurisdiction over former judges if a request for investigation is filed while that judge was still in office. If the matter complained about relates to the former judge's tenure as a judge, the request for investigation may even be filed after the person is no longer a judge.

The Commission does not have jurisdiction over federal judges or administrative law hearing officers such as workers compensation magistrates, department of corrections hearing officials, and the like. This section describes the Commission's handling and disposition of complaints involving judges.

B. What the Commission Cannot Do

The Commission is not an appellate court. The Commission cannot change a judicial officer's decision. If a court makes an incorrect decision or misapplies the law, that ruling can be changed only through the appellate process. The Commission also cannot get a judge taken off a case or have a matter transferred to another judge. The Commission cannot provide legal assistance to individuals or intervene in litigation on behalf of a party.

C. Judicial Misconduct

The Commission's authority is limited to investigating alleged judicial misconduct and, if warranted, recommending the imposition of discipline by the Michigan Supreme Court. Judicial misconduct and disability usually involves conduct in conflict with the standards set forth in the Code of Judicial Conduct. Examples of judicial misconduct include demeanor problems (such as yelling, rudeness, or profanity), improper communication with only one of the parties in a case, failure to disqualify in cases in which the judge has or appears to have a financial or personal interest in the outcome, delay in performing judicial duties, and public comment about the pending case. Judicial misconduct also may involve improper off-the-bench conduct.

D. Legal Authority

1. Michigan Constitution

The Judicial Tenure Commission was established by an amendment to the Michigan Constitution by the people of Michigan in 1968. The Commission's authority is set forth in article 6, section 30 of the Michigan Constitution. The provisions governing the Commission may be found on the Commission's web site (jtc.courts.mi.gov).

2. Michigan Court Rules

Article 6, section 30 of the Constitution authorizes the Michigan Supreme Court to make rules to implement the constitutional directive. Chapter 9.200 of the Michigan Court Rules sets forth the applicable procedures. A copy of those rules may be found on the Commission's website (jtc.courts.mi.gov).

3. Code of Judicial Conduct

The Michigan Supreme Court has adopted the Code of Judicial Conduct, most recently in 1993. 443 Mich ii (1993). The Court from time-to-time effects changes in the Code. A copy of the most recent Code may be found on the Commission's website (jtc.courts.mi.gov).

E. Recent and Anticipated Changes at the Commission

The composition of the Commission in 2015 will remain as it was in 2014, as Judge Burmeister and Ms. Diehl were re-elected to new terms, and Governor Snyder re-appointed Mr. David Fischer to a second term. The leadership will change, however, as Judge Sawyer will become the new chair, Judge Cortes will become the new vice-chair, and Ms. Diehl will become the new secretary.

II. OVERVIEW OF THE COMPLAINT PROCESS

A. HOW MATTERS ARE BROUGHT BEFORE THE COMMISSION

Anyone may file a request for investigation (or "grievance") against a judge on the Commission's complaint form, a sample of which is on the Commission's website (jtc.courts.mi.gov). The court rules require that the person filing the grievance ("the grievant") have his or her signature verified (*i.e.*, notarized) to establish that he or she has sworn to the truthfulness of the statements made in the grievance. The Commission may institute an investigation on its own, or at the request of the Chief Justice of the Michigan Supreme Court or the State Court Administrator. The Commission may also consider complaints made anonymously, and it may open a file into matters it learns of in other ways, such as news articles or information received in the course of a Commission investigation.

B. COMMISSION REVIEW OF REQUESTS FOR INVESTIGATION

Upon receipt, each properly executed grievance about a Michigan judge is carefully reviewed by the staff, along with any supporting documents or other evidence. The staff may review the court file if that would be helpful. The staff also requests any additional information from the grievant needed to evaluate the grievance. The staff may not pursue any further investigation without authorization by the Commission.

Based on an assessment of the initial information, the staff prepares a report for the Commission recommending a course of action. Each grievance is voted upon by the Commission. The Commission determines whether the complaint is unfounded and should not be pursued or whether sufficient facts exist to warrant further investigation.

1. Investigation at the Commission's Direction

When the Commission determines that a complaint warrants investigation, the Commission directs the staff to investigate the matter and report back. The Commission will give the staff specific instructions on how to conduct each investigation.

2. Disposition of Cases Without Formal Proceedings

Commission investigations may include contacting witnesses, reviewing court records and other documents, observing courtroom proceedings, and conducting such other investigation as the issues may warrant. If the investigation reveals facts that warrant dismissal of the grievance, it may be closed without the need to contact the judge before doing so. Unless the Commission determines otherwise, the judge is given a copy of the grievance upon closing the case.

At times the judge may be asked to comment on the allegations, in which case the judge is given a copy of the grievance as part of the investigation. The Commission may limit the inquiry to the judge to a particular aspect of the grievance. The judge's response is then considered along with all other information. This initial comment from the judge is generally viewed as an investigatory aid (pursuant to MCR 9.207[C][2], rather than as a necessary precursor to a formal complaint pursuant to MCR 9.207[C][1]).

C. ACTION THE COMMISSION CAN TAKE

1. Confidential Dispositions

After an investigation, the Commission has several options. If the allegations are found to be untrue or unprovable, the Commission may close the case without action against the judge. If after an investigation, the Commission determines that there was no judicial misconduct, but that certain actions of the judge should preferably not be repeated, the Commission may dismiss the matter with a letter of explanation. If after an investigation and opportunity for comment by the judge, the Commission determines that improper or questionable conduct did occur, but it was relatively minor, the Commission may dismiss the matter with a cautionary letter to the judge. In cautionary letters, the Commission will advise caution or express disapproval of the judge's conduct.

Action the Commission Can Take

- Dismissal
- Dismissal with Explanation
- Dismissal with Caution
- Dismissal with Admonition
- Recommend Private/Public Censure, Suspension or Removal to Supreme Court

When more serious misconduct is found, the Commission may dismiss the matter with an admonishment. Private admonishments from the Commission are designed in part to bring problems to a judge's attention at an early stage in the hope that the conduct will not be repeated or escalate. A private admonishment consists of a notice to the judge containing a description of the improper conduct and the conclusions reached by the Commission. A judge has the right to challenge an admonishment in the Supreme Court, which then issues a public decision approving or rejecting the Commission's action. Letters of explanation, caution, and admonishment are not issued until the respondent judge is offered the opportunity to explain what happened.

Letters of explanation, caution, and admonishment are confidential, and they are not "discipline." Due to the rules of confidentiality, the Commission and its staff ordinarily cannot advise anyone, even the person who lodged the complaint, of the nature of the action taken. Summaries of conduct that resulted in such letters issued in 2014 are contained in Section IV.

2. Public Dispositions

a. The Formal Complaint

When formal proceedings are instituted, the Commission issues a formal complaint, which constitutes a formal statement of the charges. The judge's answer to the notice of charges is filed with the Commission and served within 14 days after service of the notice. The formal complaint, the judge's answer, and all subsequent pleadings are public documents, available for inspection at the Commission's office. To the extent practicable, they are also placed on the Commission's web site (jtc.courts.mi.gov).

The rules provide for some discovery between the parties after formal proceedings are instituted. A judge is entitled to inspect and copy all documentary evidence in the Commission's possession that is to be introduced at the hearing on the formal complaint. The Commission must also give the judge the name and address of any person to be called as a witness.

The Commission may petition the Supreme Court for an interim order suspending a judge pending final adjudication of a formal complaint when necessary for the proper administration of justice. MCR 9.219.

b. Hearing

After the judge has filed an answer to the charges, the Commission sets the matter for a hearing. As an alternative to hearing the case itself, the Commission may request the Supreme Court to appoint a master to hear and take evidence in the matter and to report to the Commission. Masters are active judges or judges retired from courts of record.

The judge may be represented by counsel at the hearing. The evidence in support of the charges is presented by an examiner appointed by the Commission. The Michigan Rules of Evidence apply to the hearings, which are conducted like civil trials. MCR 9.211(A).

c. Standard of Proof

The standard of proof in Commission proceedings is by a preponderance of the evidence. *In re Ferrara*, 458 Mich 350 (1998).

d. Commission Consideration Following Hearing by Master

Following the hearing on the formal complaint, the master files a report with the Commission. The report includes a statement of the proceedings and the master's findings of fact and conclusions of law with respect to the issues presented by the formal complaint and the judge's answer.

Upon receipt of the master's report, the judge and the examiner are given the opportunity to file objections to the report and to brief the issues in the case to the Commission. Prior to a decision by the Commission, the parties are given the opportunity to present oral arguments before the Commission.

e. Disposition after Hearing by Commission

The Commission may dismiss the matter if it determines that there has been insufficient evidence of misconduct after conducting the evidentiary hearing itself or after reviewing the master's findings. However, if the Commission determines that misconduct has been established by a preponderance of the evidence, it may recommend that the Michigan Supreme Court impose discipline against the judge. The Commission itself has no authority to discipline a judge; the Michigan Constitution reserves that role for the Supreme Court. The Commission may recommend that the Court publicly censure a judge, impose a term of suspension, or retire or remove the judge from office. The Commission issues a Decision and Recommendation, which triggers the next series of steps.

f. The Supreme Court Hearing

Within 21 days after issuing its Decision and Recommendation, the Commission files the original record in the Supreme Court and serves a copy on the judge. Within 28 days after that, the judge may file a petition in the Supreme Court to modify or reject the Commission's Decision and Recommendation. The Commission has 21 days to respond with a brief of its own supporting its finding. Even if the judge does not file a petition, the Supreme Court reviews the Commission's Decision and Recommendation.

The Court clerk places the matter on the Court calendar. The judge and the Commission have an opportunity to present oral arguments to the Court, which reviews the record on a *de novo* basis. *In re Ferrara*, 458 Mich 350 (1998). After reviewing the record, the Court issues an opinion and judgment directing censure, removal, retirement, suspension, or other disciplinary action, or rejecting or modifying the Commission's Decision and Recommendation. The court rules allow a judge to file a motion for rehearing in the Supreme Court unless the Court directs otherwise in its opinion.

D. CONFIDENTIALITY OF COMMISSION PROCEEDINGS

The Michigan Constitution authorizes the Supreme Court to provide for the confidentiality of complaints to and investigations by the Commission, Michigan Constitution; article 6, section 30. The court rules provide that complaints and investigations are confidential, subject to certain exceptions, unless and until a formal complaint is issued. MCR 9.221.

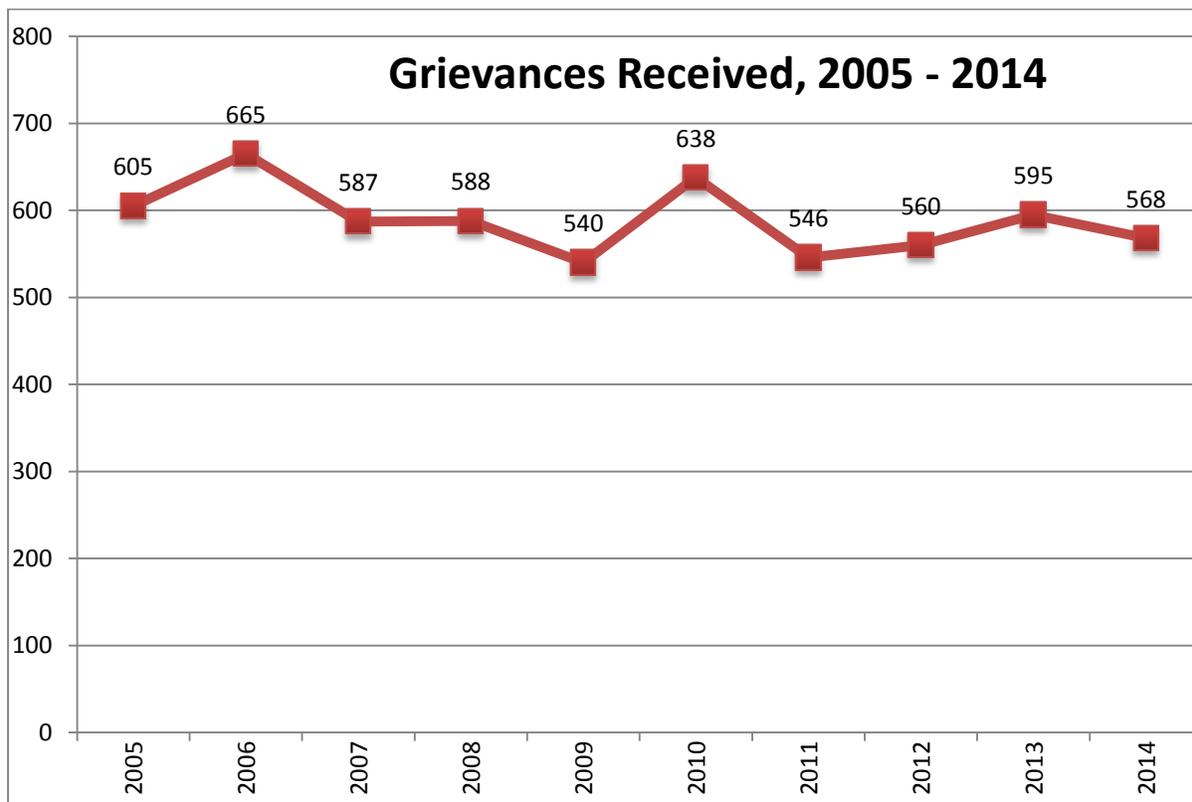
The court rules permit the Commission to make public statements during the investigating stage if, on its sole determination by majority vote, it is in the public interest to do so. MCR 9.221. Nevertheless, the Commission’s statement, if any, is limited to the fact that (1) there is an investigation pending or (2) the investigation is complete and there appears to be insufficient evidence for the Commission to file a complaint. The court rules provide that when formal proceedings are instituted, the formal complaint, answer, and all subsequent pleadings and proceedings are open to the public. MCR 9.221(B).

III. 2014 STATISTICS

A. COMPLAINTS RECEIVED AND INVESTIGATED

In 2014, the Commission received 755 requests for "Requests for Investigation" forms. There were 568 Requests for Investigation filed in 2014.

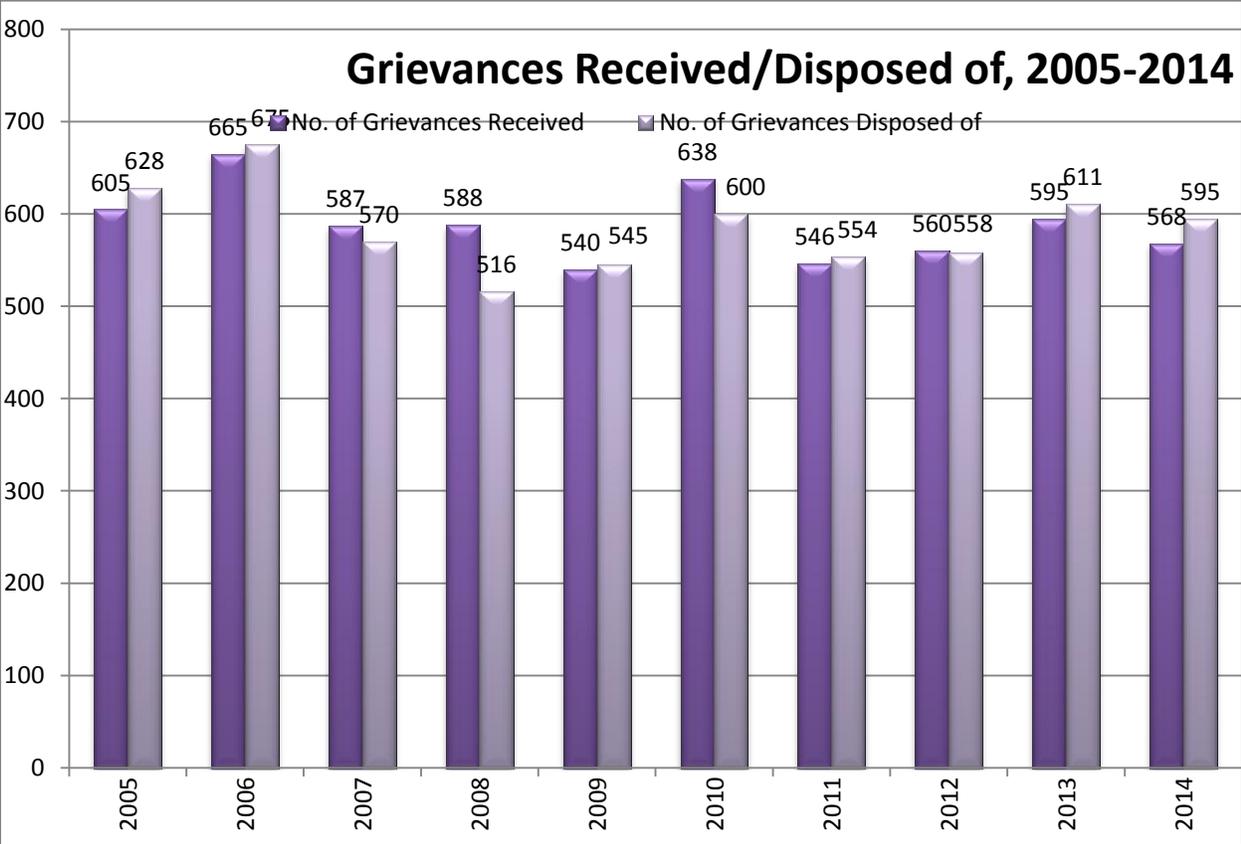
2014 CASELOAD	
Cases Pending on 1/1/14	85
New Grievances Considered	568
Cases Concluded in 2014	595
Cases Pending on 12/31/14	58



The grievances set forth a wide array of allegations. A substantial percentage alleged legal error not involving misconduct or expressed dissatisfaction with a judge’s discretionary handling of judicial duties.

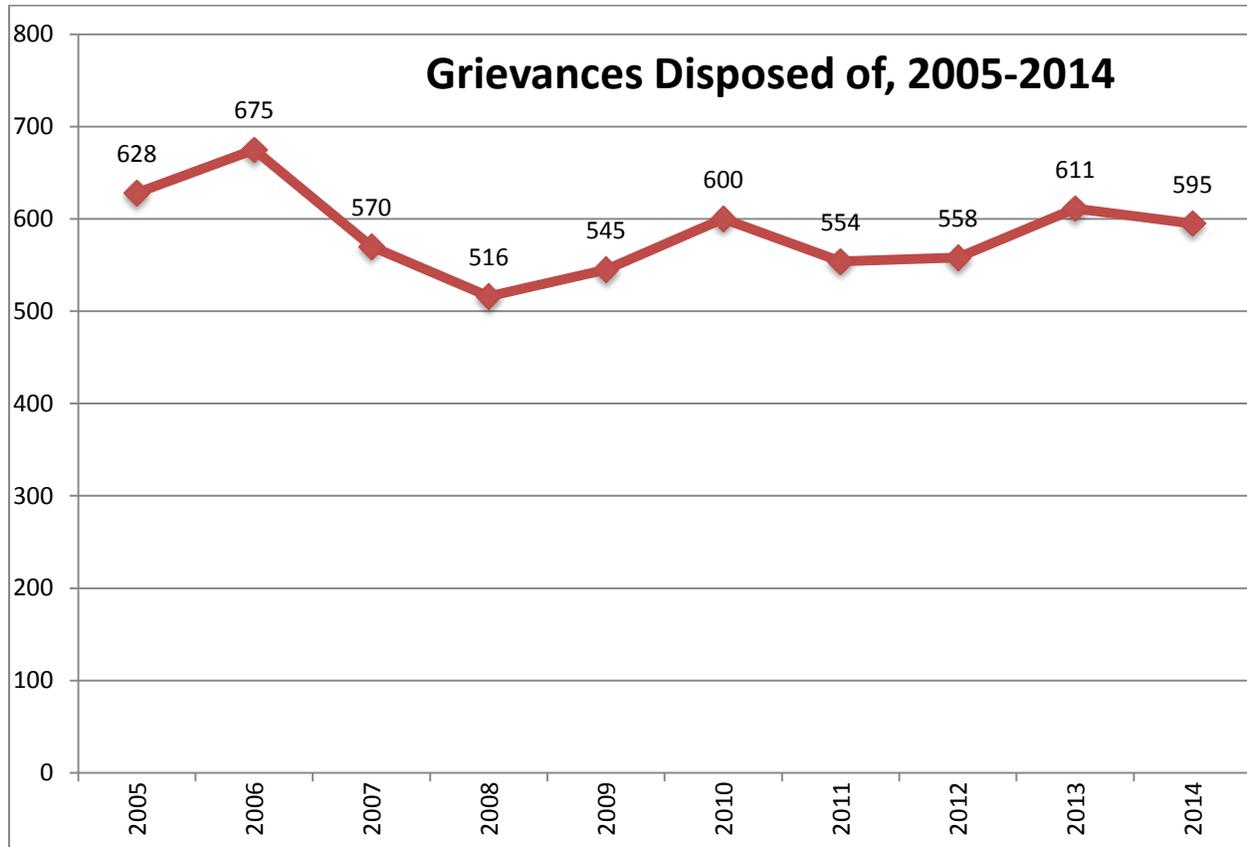
The Commission also received grievances concerning individuals and matters that did not come under the Commission’s jurisdiction: federal judges, former judges, workers’ compensation judges, other government officials and miscellaneous individuals. Commission staff responded to each of these complaints and, when appropriate, the Commission made referrals.

The number of judgeships within the Commission’s jurisdiction has remained fairly constant at 1,259.



B. COMPLAINT DISPOSITIONS

The following case disposition statistics are based on cases completed by the Commission in 2014, regardless of when the complaints were received. In 2014, the Commission disposed of 595 cases.



C. CLOSED WITHOUT ACTION

In 568 of the 595 cases closed in 2014, a sufficient showing of misconduct did not appear after the information necessary to evaluate the complaint was obtained and reviewed. In other words, these files alleged facts that, even if true, would not constitute judicial misconduct. Investigation showed that the allegations were unfounded or unprovable, or the judge gave an adequate explanation of the situation, or the Commission lacked jurisdiction.

D. CLOSED WITH ACTION

In 2014, the Commission issued 4 letters of admonishment and 4 letters of caution. Each of these dispositions is summarized in Section IV.

E. FORMAL COMPLAINTS

The Commission issued three formal complaints in 2014. They are summarized in Section IV.

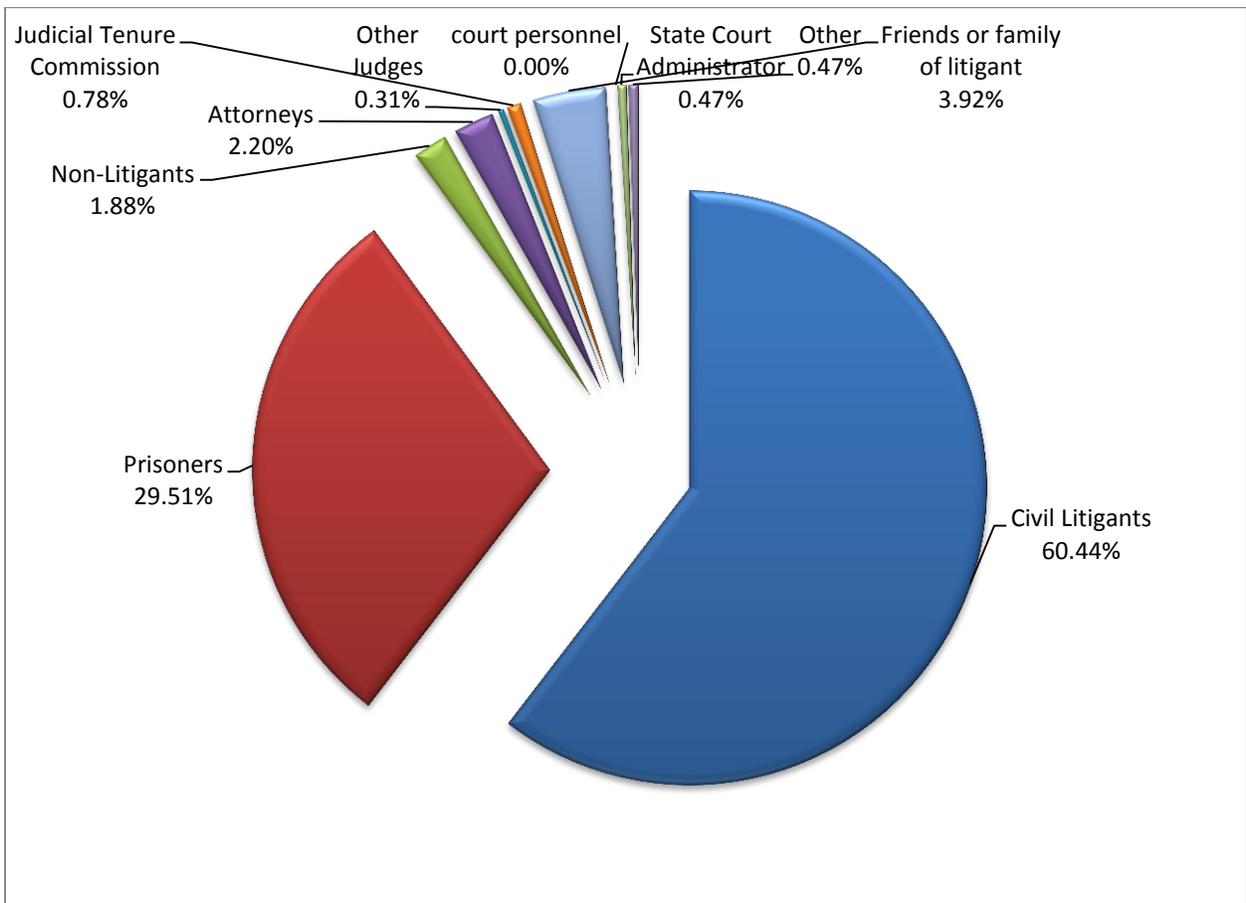
- Formal Complaint No. 94 – Hon. Dennis N. Powers
- Formal Complaint No. 95 – Hon. Brenda K. Sanders
- Formal Complaint No. 96 – Hon. J. Cedric Simpson

F. SUMMARY OF GRIEVANCES CONSIDERED IN 2014

The 568 requests for investigation received by the Commission derived from the following sources, covered the following subject matter, and were lodged against the following types of judges. The totals may not equal 568, as some grievances cover more than one judge or contain more than one type of alleged misconduct.

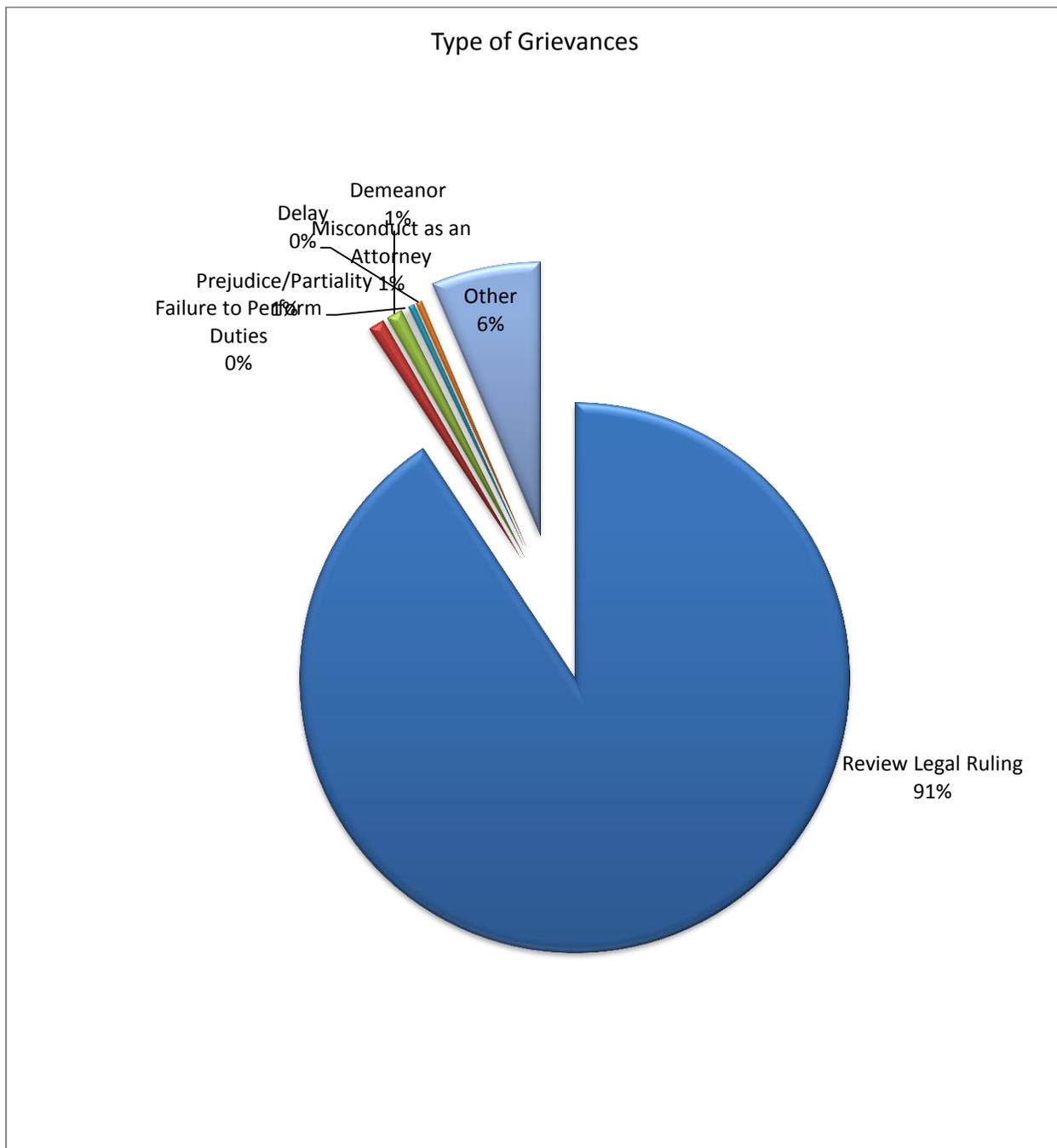
G. SOURCES OF GRIEVANCES

Litigants (including prisoners) filed the majority of requests for investigation, 98% of the total.



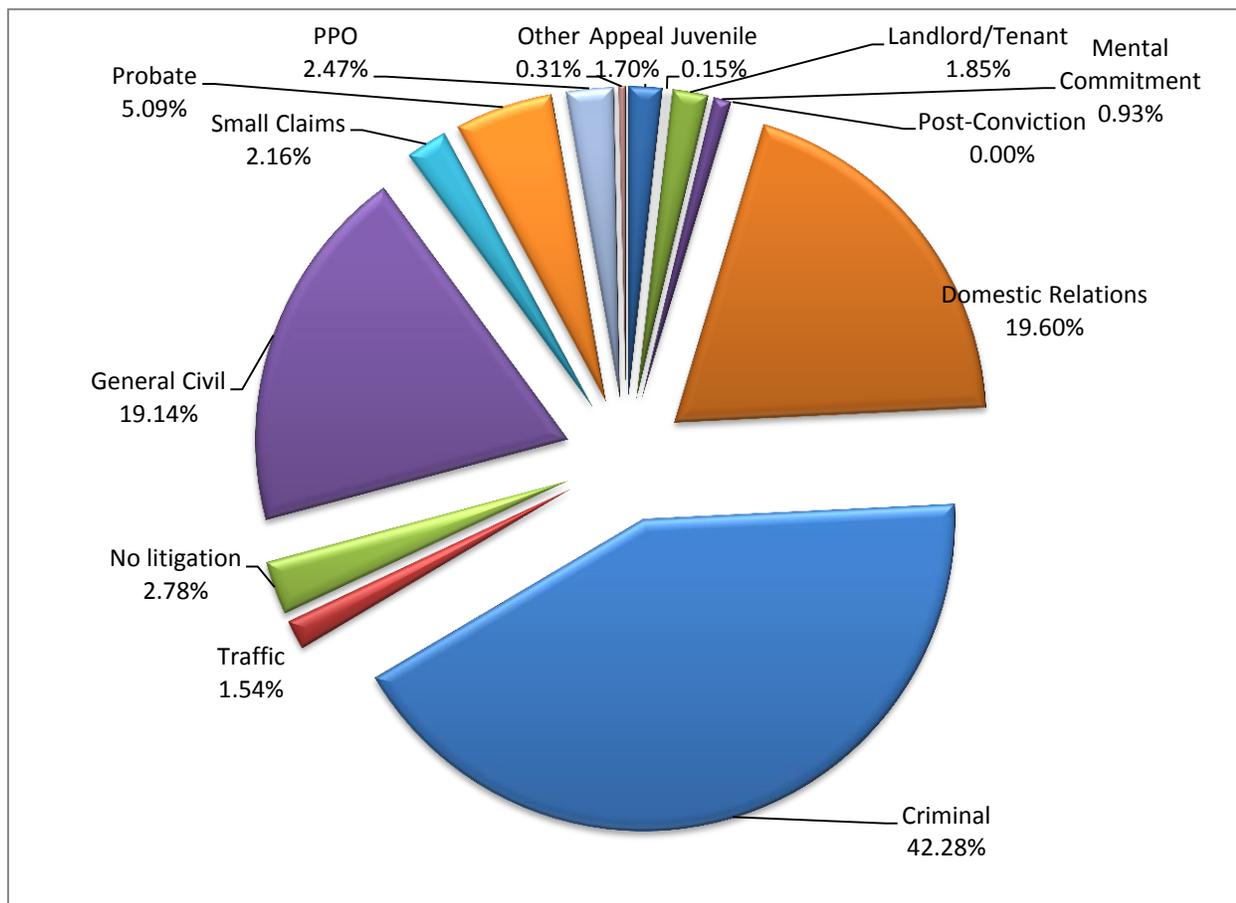
H. SUBJECT MATTER OF GRIEVANCES

Eighty-eight per cent of matters complained of in the Requests for Investigation sought to have the Commission review the merits of the underlying case. However, the Commission has no jurisdiction to act as an appellate body, so unless there was evidence of judicial misconduct, those matters were ultimately dismissed.



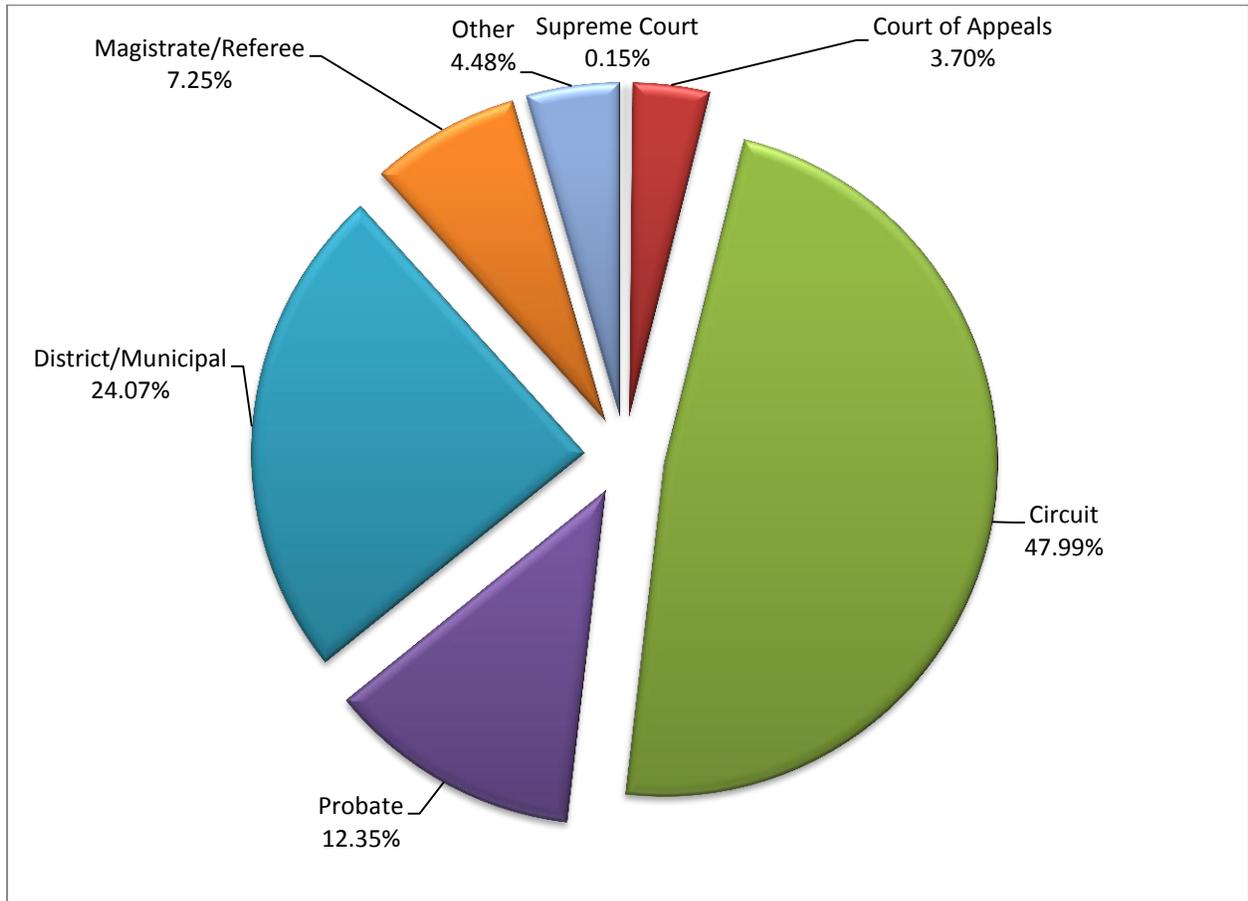
I. NATURE OF UNDERLYING LITIGATION

Criminal cases, domestic relations matters, and general civil cases continue to be the most common types of cases to produce grievances against the judge.



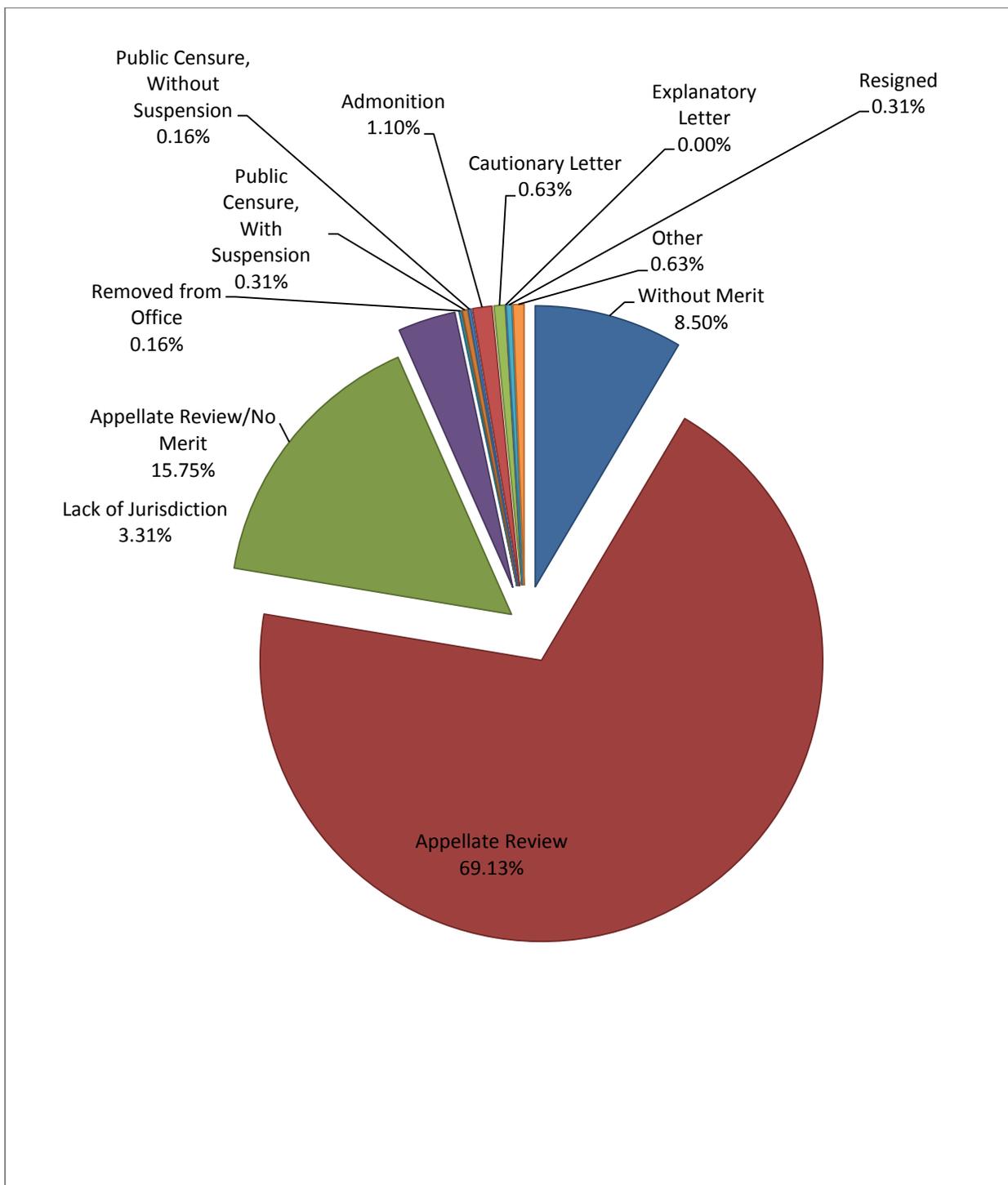
J. CATEGORIES OF RESPONDENT JUDGES

The circuit judges, who comprise about one-fifth of the judiciary, received about half of the grievances. This is most likely due to the circuit judges handling so much of the criminal and domestic relations dockets, which together generate about half of the grievances. District court judges, who comprise nearly 25% of the judiciary, received a relatively proportionate 33% of the grievances filed.



K. DISPOSITIONAL BREAKDOWN

There was one resignation, one removal, and three public censures in 2014. The Commission issued four letters of caution and 4 letters of admonition in matters that did not rise to the level warranting formal complaints.



IV. CASE SUMMARIES

A. PUBLIC PROCEEDINGS

1. FORMAL COMPLAINTS

a) **Formal Complaint No. 92, Hon. Bruce U. Morrow** – Third Circuit Court (Wayne County) (496 Mich 291 [2014])

Prior to the issuance of a formal complaint in this matter, Respondent and the Examiner reached a settlement, which the Commission adopted, and recommended a public censure of the Respondent. Two members of the Commission filed a concurrence/dissent, agreeing with the facts, but concluding that the discipline was inadequate; they would have recommended a 60- to 90-day suspension, as well. The Court rejected the proposed public censure as too lenient in light of the facts presented and remanded for further proceedings while retaining jurisdiction. The parties were unable to resolve the matter through further negotiations, so Formal Complaint No. 92 issued against Respondent. The complaint alleged 10 counts of judicial misconduct, all arising out of criminal cases in which Respondent was the presiding judge. The facts of each count can be summarized as follows:

1. Count 1: In *People v Orlewicz*, Respondent closed the courtroom to the public and the victim's family during a postconviction hearing without specifically stating the reasons for the closure or entering a written order as required by MCR 8.116(D). Respondent subsequently ordered his court reporter not to prepare transcripts of the hearing.
2. Count 2: In *People v Fletcher*, Respondent failed to sentence a defendant convicted of operating a motor vehicle while intoxicated, third offense, MCL 257.625, in accordance with the mandatory minimum of 30 days in jail as prescribed by MCL 257.625(9)(c)(ii), despite the prosecutor's bringing the relevant statute to his attention. Respondent later discharged the defendant from probation without the defendant's having served the mandatory 30 days in jail.
3. Count 3: In *People v Slone*, Respondent sentenced the defendant to a prison term 18 months below the sentencing guidelines range.

4. Count 4: In *People v McGee*, Respondent refused the prosecutor's request to remand the defendant convicted of first-degree criminal sexual conduct with a person under the age of 13 to jail awaiting sentencing as required by MCL 770.9b(1).
5. Count 5: In *People v Wilder*, following the defendant's guilty plea, Respondent dismissed the case *sua sponte* on the basis that a previous dismissal order was with prejudice. When the prosecutor informed him that his justification was contradicted by the record – in fact, the prior dismissal was *without* prejudice – Respondent stated that the dismissal was “conditional with prejudice.”
6. Count 6: In *People v Jones*, Respondent *sua sponte* dismissed the case on the basis of unreliable information in a search warrant affidavit after directing the prosecution to produce all its search warrant records involving a particular confidential informant and was subsequently disqualified from the case by the Court of Appeals.
7. Count 7: In *People v Boismier*, Respondent failed to place a sidebar conference on the record, failed to rule on the defendant's request for a curative instruction, and failed to follow instructions from the Court of Appeals to hold an evidentiary hearing on a contested legal issue, and his ruling on remand was not supported by the trial record.
8. Count 8: In *People v Redding*, at the beginning of a trial over which he was to preside, Respondent left the bench, shook hands with the defendant, and gave a package of documents to defense counsel.
9. Count 9: In *People v Moore*, Respondent *sua sponte* subpoenaed medical records of the defendant without the parties' knowledge or consent.
10. Count 10: In *People v Hill*, Respondent personally retrieved an inmate from lockup, escorted him to his courtroom, and sentenced him without restraints or courtroom security personnel present.

Following a public hearing, the master found that a preponderance of the evidence established the factual basis for each of the allegations in the formal complaint. However, he concluded that the facts constituted judicial misconduct in only two counts—Count 4 and Count 10. The master found,

“[T]here is a pattern in ... these cases, but not necessarily as described by the Examiner. Respondent's ‘pattern’ of judging is to proactively prevent legally wrongful results. Though his methods are sometimes unorthodox, ‘his heart is in the right place’ ensuring in his mind, that justice prevails in the criminal justice system.”

After hearing oral argument, the Commission issued its decision and recommendation on December 9, 2013, disagreeing with the master's conclusions of law, and concluding that the evidence established judicial misconduct in eight of the ten allegations. The Commission recommended that Respondent be suspended for 90 days without pay.

The Court deviated from the Commission's recommendation. The Court specifically mentioned that Respondent did not seek to personally benefit from his misconduct as a relevant mitigating factor. The Court also found that the Commission had “overstated the pattern in this case,” and thus overstated the extent to which the first *Brown* factor weighed in favor of a harsher sanction. The Court imposed a 60-day suspension without pay, which Respondent served. He has since returned to the bench. The Chief Justice dissented; he would have imposed the 90-day suspension without pay recommend by the Commission.

b) Formal Complaint No. 93, Hon. Wade McCree, Jr. – Third Circuit Court (Wayne County) (495 Mich 51 [2014])

Following a public hearing in May 2013, receipt of the master's report, and oral argument by the parties in August 2013, the Commission determined that Respondent had committed misconduct and lied about it. The Commission recommended that the Supreme Court issue an order removing Respondent from office and that the Court conditionally suspend him for an additional six-year period, beginning on January 1, 2015, if Respondent were elected/re-elected in the general election in November 2014. Further, the Commission recommended that the Court order Respondent to pay

the cost, fees, and expenses incurred by the Commission in prosecuting the matter, in the amount of \$11,945.17.

The Court issued its opinion on March 26, 2014, affirming almost all of the Commission's factual findings and conclusions of law, and adopting its recommendation. The Court found that Respondent (a) had a sexual relationship with a complaining witness in a case pending before him without recusing himself for several months, (b) engaged in numerous *ex parte* communications with her concerning the case, as well as concerning another case in which one of her relatives was a party, (c) violated various policies of the courthouse by permitting his mistress to enter the facility through an employee entrance without going through security, allowing her to remain alone in his chambers while he was on the bench, arranging for her to park her vehicle in an area reserved for judges, and sneaking her cell phone into the courthouse for her, (d) transmitted numerous text messages to her while he was on the bench that contained inappropriate and derogatory references to defendants, litigants, and witnesses appearing before him, (e) lied about when and why he finally did recuse himself from the case in which his mistress was the complaining witness, (f) sought to use the prosecuting attorney's office as leverage against his then ex-mistress by concocting charges of stalking and extortion against her, and (g) lied under oath during the Commission proceedings. The Court removed Respondent from office effective immediately and conditionally suspended him without pay for six years beginning on January 1, 2015, with that suspension becoming effective only if he were elected/re-elected to judicial office in November 2014. Further, because Respondent engaged in conduct involving "deceit, or intentional misrepresentation," pursuant to MCR 9.205(B) the Court ordered Respondent to pay the Commission's costs of \$11,645.17.

c) Formal Complaint No. 94, Hon. Dennis N. Powers - 52-1 District Court (Oakland County)

On June 10, 2014, the Judicial Tenure Commission issued Formal Complaint No. 94 against Judge Dennis N. Powers of the 52-1 District Court, together with a Request for Appointment of

Master. The complaint alleged that Judge Powers had committed misconduct by falsifying travel records and submitting them for reimbursement, falsifying conference reimbursement requests and submitting them for payment, defrauding the County regarding his vacation time, misusing County equipment (such as his County-issued cell phone and laptop), failing to perform his judicial duties, serving as a director on a for-profit institution, and making false statements to the Commission in the course of the investigation.

Respondent resigned his office, effective September 1, 2014. The Commission then dismissed the formal complaint.

d) Formal Complaint No. 95, Hon. Brenda K. Sanders - 36th District Court (Wayne County)

On September 9, 2014, the Commission issued Formal Complaint No. 95 against Hon. Brenda K. Sanders of the 36th District Court. The complaint alleged that Respondent was suffering from a mental impairment that precluded her from serving as a judge, that she had defrauded the court by claiming sick time when she did not have a condition that so required, failed to co-operate with the Commission during the investigative process, including refusal to comply with a Supreme Court order regarding an independent medical examination by a psychiatrist, and that she had made false representations to the Commission during the investigation.

A hearing was held in October 2014, but Respondent did not attend. The master issued his report in January 2015, finding that Respondent was psychotic and unfit to serve as a judge. The matter will be argued before the full Commission on February 9, 2015, and the Commission is expected to issue its Decision and Recommendation by March 16, 2015.

e) Formal Complaint No. 96, Hon. J. Cedric Simpson - 14A District Court (Washtenaw County)

The Judicial Tenure Commission issued Formal Complaint No. 96 against Hon. J. Cedric Simpson, of the 14A District Court, on November 12, 2014. Respondent is charged with interfering

in a police investigation involving his then-intern/friend, as well as with making false representations to the Commission during the course of the investigation. The matter is scheduled for hearing before the master in March 2015.

2. NON-FORMAL COMPLAINTS

a) Hon. Dennis Wiley – Berrien County District Court (495 Mich 963 [2014])

The Commission accepted a Settlement Agreement between the Respondent and the Examiner, and recommended a public censure of the Respondent. The Court accepted the recommendation and adopted the Commission’s findings of facts, which were, in turn, adopted from the Settlement Agreement. A woman named LaRue Ford had some outstanding fines on her driver’s record, and she contacted the staff of the Berrien County Trial Court in an effort to resolve the situation. Ms Ford became upset at the clerks’ counter, as she believed that the court staff had previously advised her that all fees had been paid and the hold on her driver’s license should have been lifted. She was also upset by the possible imposition of a credit card service fee. Several clerks heard Ms Ford use the term “f*ckers” or “motherf*ckers” on one or two occasions when dealing with them. None of the clerks ever felt threatened or in danger, and Ms Ford never interfered with their ability to perform their duties.

Respondent later overheard the clerks discussing what had happened. Respondent then directed that Ms Ford be brought before him in his courtroom when she returned to the courthouse. He then arraigned Ms Ford for “contempt of court outside of his presence,” based only on the unsworn conversation he had heard between the clerks. He did not disclose that he had had the previously mentioned conversations with the clerks. He did not disqualify himself, or raise the issue of his possible disqualification, based on his receipt of the information communicated in those conversations.

Respondent set the matter for a hearing on the contempt charge and set a bond of \$5,000/10%. Ms. Ford did not post bond and spent the night in jail. She posted the bond the next morning and was released from custody. Ms. Ford appeared for the contempt hearing as scheduled on December 18, 2012, represented by an assigned attorney. The attorney requested that the contempt hearing be adjourned, as he wanted additional time to review the law applicable to the matter. Respondent adjourned the matter and increased Ms. Ford's bond from \$5,000/10% to \$5,000/cash or surety, after her counsel requested that she be allowed to travel to Arizona and go to work as a long-haul truck driver. Ms Ford was taken back into custody and not released until December 28, 2012, when an appeal to the circuit court resulted in a reinstatement of the original \$500 bond.

The Commission recommended, the Respondent consented, and the Court imposed a public censure.

b) Hon. Sheila M. Gibson – Third Circuit Court (Wayne County) (497 Mich 858 [2014])

In November 2012, Detroit-area television station broadcast a story about Respondent and their having monitored her comings and goings at the courthouse during the week of October 14, 2012.

(a) On Monday, October 15, 2012, Respondent arrived at the courthouse parking lot at 10:55 a.m., took the bench at approximately 11:00 a.m., and there were 18 matters set for hearing that morning, beginning at 9 a.m.

(b) On Tuesday, October 16, 2012, Respondent arrived at the courthouse parking lot at 10:38 a.m., took the bench at approximately 11:00 a.m., and there were 16 matters set for hearing that morning, beginning at 9 a.m..

(c) On Wednesday, October 17, 2012, Respondent arrived at the courthouse parking lot at 10:58 a.m., took the bench at approximately 11:00 a.m., and there were 22 matters set for hearing that morning, beginning at 9 a.m..

(d) On Thursday, October 18, 2012, Respondent arrived at the courthouse parking lot at 10:30 a.m., took the bench at approximately 11:00 a.m., and there were 15 matters set for hearing that morning, beginning at 9 a.m..

(e) On Friday, October 19, 2012, Respondent arrived at the courthouse parking lot at 10:05 a.m., took the bench at approximately 11:00 a.m., and there were 15 matters set for hearing that morning, beginning at 9 a.m..

On these five days, Respondent left the courthouse between 4:00 p.m. and 4:30 p.m. Litigants, attorneys, and witnesses had been present in the courtroom as early as 9 a.m., when many of the matters were scheduled to be heard. Due to Respondent's tardiness, however, they were not able to have their matters addressed in a fashion.

The parties had originally stipulated to a public censure, but the Court rejected that sanction. The parties later agreed upon a public censure and a 30-day suspension without pay, which the Court accepted and imposed.

c) Hon. Kirk W. Tabbey – 14-A District Court (Washtenaw County) (497 Mich 900 [2014])

On September 17, 2014 Respondent operated a motor vehicle by towing a boat and trailer out of the water at a public launch and parking on the shoulder of a public road in Antrim County, Michigan, while having an alcohol content of 0.17 grams or more per 210 liters of breath. A criminal complaint was issued against Respondent, charging him with Operating a Motor Vehicle with a High Blood Alcohol Content, contrary to MCL 257.625(1)(c), and on October 16, 2014, he pled guilty to a reduced charge of Operating a Motor Vehicle Under the Influence of Alcohol, contrary to MCL 257.625(1)(a), in 86th District Court case no. 2014-9791-SD. He was sentenced that same date to pay a fine, and the criminal case was closed.

Respondent entered into a Settlement Agreement with the Commission on October 29, 2014, the Commission issued its Decision and Recommendation for a public censure and a 90-day

suspension without pay on November 10, 2014, and the Court accepted that recommendation and imposed that sanction in a decision issued November 25, 2014.

B. NON-PUBLIC PROCEEDINGS

(1) On the Bench Conduct (and Relating to Cases)

(a) Bias/prejudice

Respondent's long-term friendship with a criminal defendant should have prompted him to recuse himself from the case, especially where the judge had given the defendant advice in the matter. Nevertheless, the judge's decision to conduct the arraignment was not, in and of itself, misconduct. However, considering the defendant's request for court-appointed counsel was. Respondent knew that the information provided in defendant's request was incomplete, yet Respondent relied his personal knowledge of additional facts that were in defendant's favor, such as the condition of the defendant's home, his social security income, and his business losses while ignoring the fact that he owned significant assets. Respondent's relationship with the defendant appeared to influence Respondent's judicial conduct.

Respondent then appointed his own son to represent the defendant. Respondent's contention that he signed a blank order and the court administrator selected the attorney from a "rotating list" was unpersuasive. As the judicial officer, Respondent was responsible for the contents of the orders that bear his signature. Additionally, signing fill-in-the-blank orders is problematic, not least of all because it creates the impression that Respondent was attempting to get around what he knew to be wrong. Furthermore, the record showed that the Respondent knew his son was being appointed as the defendant's attorney.

(b) Delay

A judge failed to rule on cross-summary disposition motions for some 14 months. It was commendable that the judge offered to conduct a “quick settlement conference” at the end of the oral arguments to try to resolve the matter. The register of actions showed that the judge had the file, but still the judge did not rule. The judge later blamed the judge’s clerk for having misplaced it. Nevertheless, counsel for the plaintiff contacted the court several times, to no avail, but the judge claimed no one on staff knew anything about that.

(c) Contempt

The judge ordered an attorney incarcerated for contempt during a six-minute hearing in the span of only a few pages of transcript. While the transcript may not convey the attorney’s “combative tone,” and a judge surely has an obligation to maintain decorum in the courtroom, it appeared that the judge was overly swift in incarcerating a member of the bar for attempting to advocate for his client. There was every appearance that the judge may have overreacted to the situation.

(d) Administration of Justice

A judge continued to exercise jurisdiction in a matter after recusing himself/herself from the case. Once the judge recused himself/herself, the judge should not have entertained bond motions.

A judge does not have the authority to delegate his/her judicial responsibilities. Despite the alleged complexity of the discovery issues in a case, the essence of a judge's job is to judge. Sometimes the cases may be difficult or perhaps "highly charged;" sometimes they may be easier. By appointing a "discovery master," however, the judge improperly delegated his/her judicial duties to another. Furthermore, the appointment of a "discovery master" left the distinct impression that the judge did so solely to avoid having to preside over the motion hearings, which had the potential to be long and tedious, but were, nonetheless, the judge's job. It makes little sense for the parties to pay a third-party, private individual to make the judicial decisions that are within the judge's authority and jurisdiction and that the judge is already paid to make.

Respondent took a year to resolve the motion for relief from judgment. Further, as an experienced jurist, Respondent should have recognized that testimony was needed to resolve the issue alleged. Furthermore, Respondent did not work on 15 days that Respondent did not report as vacation time.

Respondent also engaged in improper conduct by closing the courtroom to the media, without complying with the requirements of MCR 8.116(D) which calls for the judge to make a record of the specific reasons for the closure decision and to narrowly tailor that closure to accommodate the interest to be protected. Respondent also failed to permit any party objecting to the restriction to file a motion to set it aside or to make an on-the-record objection to it, and failed to file a copy of the closure order with the State Court Administrative Office.

(2) Off the Bench Conduct

(a) Election issues

In the judge's election campaign, the judge listed of the names of other judges and judicial officers, with their honorific titles, as members of the judge's fundraising committee, but claimed that doing so was "inadvertent," despite having been involved in several judicial election campaigns.

A judge placed (or personally allowed to be placed) a lawn sign in his front yard supporting a non-judicial, partisan candidate in the upcoming elections. The judge was the sole owner of the property. Although a judge may make financial contributions to a non-partisan candidate's campaign, yard signs and the like are different. They are overt and highly conspicuous public endorsements, and, as such, run afoul of Canon 7. Contributing to a campaign constitutes a personal choice to support a candidate; advertising one's support for a candidate *via* a lawn sign is more akin to an endorsement or recommendation to others to vote in a certain way.

(b) Charitable solicitation

A judge signed a letter written on court stationery addressed to the president of a local community foundation stating "Pursuant to our conversation, I am requesting a contribution in the amount of \$1500.00 for the above referenced event." Canon 4D (formerly 5[B] [2]) states in

relevant part that a judge should not individually solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of the office for that purpose. This letter was in direct violation of the Canon.

(c) Attendance

A judge's attendance record was extremely poor in 2012 and 2013, missing over 25% of the scheduled working days in 2012 (66 total), and the vast majority of those were personal time off. In 2013, the judge missed 46 working days, but only one of those was for a sick day. The judge also failed to report the overwhelming majority of those days missed. Furthermore, the judge was less than candid in responding to the Commission's inquiries. There was substantial evidence to support the assertion that the judge's failure to report vacation days was a common practice for that judge.

V. COMMISSION ORGANIZATION, STAFF AND BUDGET

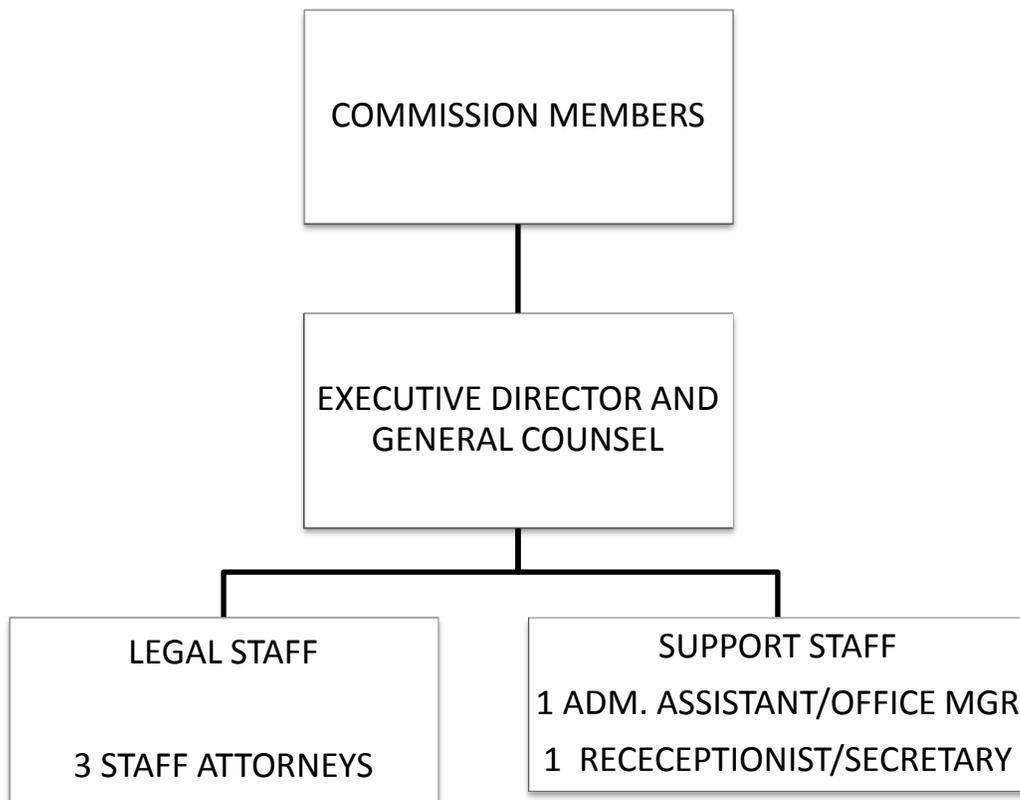
A. COMMISSION ORGANIZATION AND STAFF

The Commission has 6 staff positions, including the Executive Director, 3 staff attorneys and 2 support staff.

The Executive Director and General Counsel is hired by, and reports directly to the Commission. The Executive Director oversees the intake and investigation of complaints and is the examiner handling the formal proceedings. The Executive Director is also the primary liaison between the Commission and the judiciary, the public, and the media. Paul J. Fischer has served as Executive Director and General Counsel since January 1, 2001.

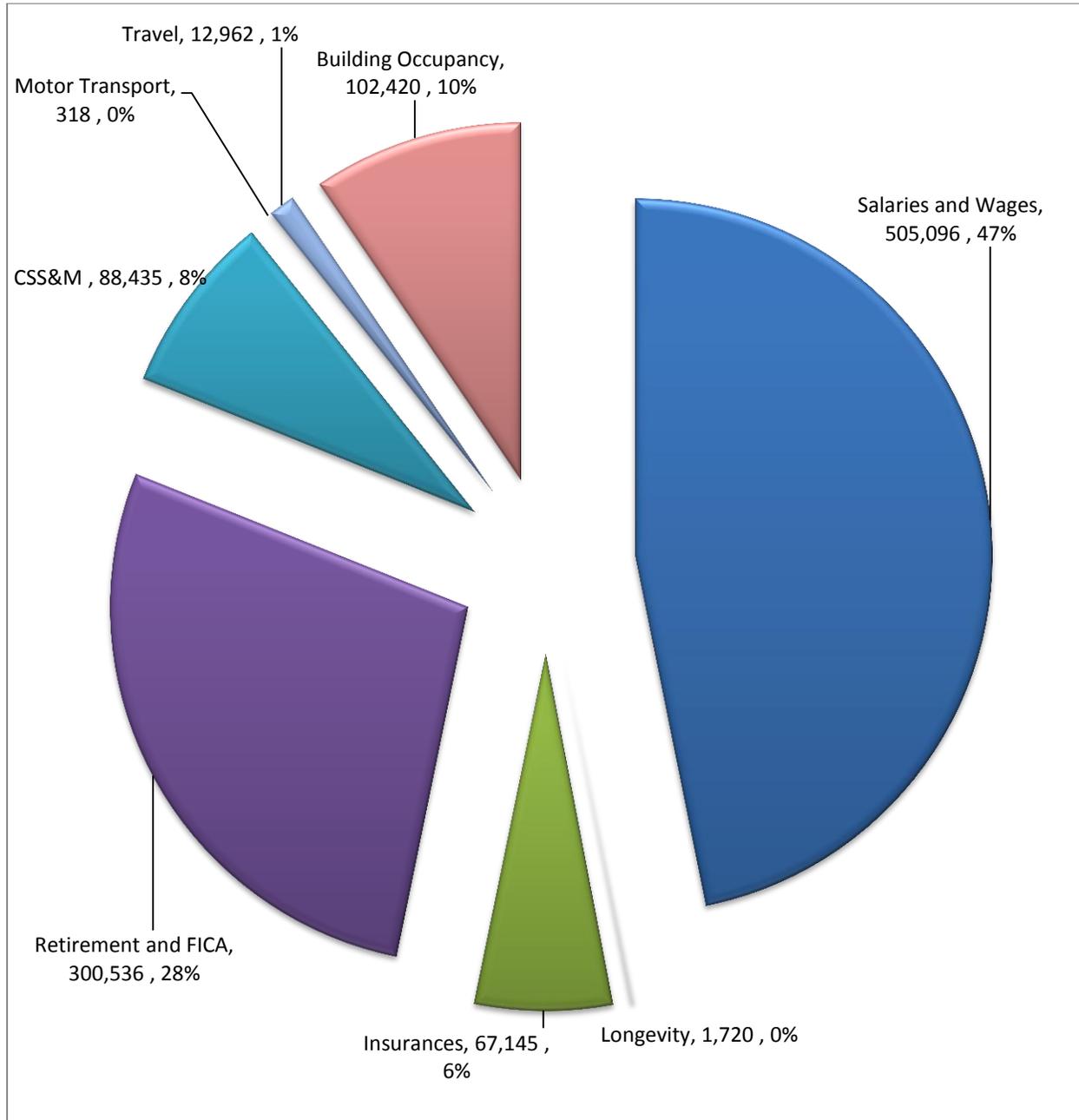
The Commission's legal staff is responsible for the evaluation and investigation of grievances and serves as associate-examiners during formal proceedings. The Commission's legal staff is comprised of Senior Staff Attorney Casimir J. Swastek, Staff Attorney Glenn J. Page, and Staff Attorney Margaret N.S. Rynier. The examiner is responsible for preparing cases for hearing and presenting the evidence that supports the charges before the master. The examiner handles briefing regarding master's reports, and presents cases orally and in writing in hearings before the Commission and the Michigan Supreme Court.

The Commission's support staff is comprised of Administrative Assistant-Office Manager, Camella Thompson and Receptionist-Secretary Celeste R. Robinson. All Commission staff members are state employees.



B. BUDGET

The Commission's budget is included in the budget of the Supreme Court. For the 2014 fiscal year (October 1, 2013–September 30, 2014), the Commission spent \$1,078,632, which was \$23,068 under budget. The surplus was returned to the Court's account. The Commission also recovered \$32,188.10 in Court-ordered costs from respondent-judges. The Commission continues to do its part to keep its expenditures to a minimum.



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